

## Decision for dispute CAC-UDRP-105178

Case number	CAC-UDRP-105178
Time of filing	2023-02-08 08:51:53
Domain names	boehringeringelhempetrebates.com

### Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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### Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG
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### Complainant representative

Organization	NAMESHIELD S.A.S.
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### Respondent

Organization	Fundacion Comercio Electronico
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#### OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

#### IDENTIFICATION OF RIGHTS

The Complainant is the owner of the International trademark "Boehringer-Ingelheim" (word) No. 221544 registered from July 2, 1959 and the International trademark "Boehringer Ingelheim" (word) No. 568844 registered from March 22, 1991 at the date of filing of the Complaint internationally registered inter alia in Germany, France and Spain.

#### FACTUAL BACKGROUND

The Complainant is a German family-owned pharmaceutical group of companies. Currently, it has about roughly 52,000 employees. In 2021, the Complainant achieved net sales of 20.6 billion euros.

The Complainant claims it owns inter alia the domain name <boehringeringelhempetrebates.com> registered and used since August 14, 2019.

The disputed domain name was registered by the Respondent on January 16, 2023.

#### PARTIES CONTENTIONS

## 1. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its "Boehringer Ingelheim" trademarks. The Complainant maintains that the subtraction of the letter "I" and the addition of the letter "H" and the terms "PET REBATES" to the trademark BOEHRINGER INGELHEIM are not sufficient to avoid confusion with the Complainant's trademarks.

Furthermore, the Complainant contends that the Respondent lacks any rights or legitimate interests in the disputed domain name.

Specifically, the Complainant notes that (i) the Respondent is not identified in the Whois database as the disputed domain name and is not affiliated with nor authorized by the Complainant in any way, and (ii) the Respondent has not been granted any license or authorization by the Complainant to make use of its trademarks or register the disputed domain name.

The Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith. Firstly, given the distinctiveness and reputation of the Complainant's trademarks, it is reasonable to conclude that the Respondent registered and used the domain name with full knowledge of the Complainant's trademarks. Secondly, the Respondent chose to register the domain name to create confusion with the domain name <boehringerengelheimpetrebates.com>, which is used by the Complainant to offer rebates on pet health products. Thirdly, the disputed domain name resolves to a parking page with commercial links, and the Respondent has attempted to attract Internet users to his own website for commercial gain using the Complainant's trademarks. These actions are evidence of bad faith.

## 2. Respondent

No administratively compliant response has been submitted by the Respondent.

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### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

The Complainant has successfully demonstrated that it is the rightful owner of the "Boehringer-Ingelheim" and "Boehringer Ingelheim" word trademarks, which enjoy legal protection in numerous countries. The Panel acknowledges that the Complainant's Boehringer-Ingelheim trademarks are unmistakably recognizable in the disputed domain name, and agrees with the Complainant that the mere substitution of the letter "I" and addition of the letter "H" (which the Panel regards as an evident and deliberate misspelling) and of the words "PET REBATES" are insufficient to prevent the likelihood of confusion with the Complainant's trademarks.

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### NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

A complainant is required to establish a prima facie case that the respondent lacks rights or legitimate interests. Once such a case is made, the burden of proof shifts to the respondent to demonstrate their rights or legitimate interests in the domain name. Failure to do so results in the complainant satisfying paragraph 4(a)(ii) of the Policy (as per Article 2.1 of WIPO Jurisprudential Overview 3.0 and WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

Based on the contentions of the Complainant, the Panel finds that the Complainant has successfully established a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

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### BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see Article 3.1. of WIPO Jurisprudential Overview 3.0).

#### Registration in bad faith

The Panel considers the following factors in determining bad faith registration of the disputed domain name:

- (a) The Complainant's long-standing history and reputation, along with its registered trademarks (including one registered as far back as 1959);
- (b) The inherent distinctiveness of the Complainant's trademarks, which combine the founder's family name (Boehringer) with the location of the company's roots (Ingelheim am Rhein, Germany);
- (c) The disputed domain name includes obvious and intentional misspellings of the Complainant's trademarks, which amounts to typo-squatting.

Based on the above, the Panel concludes that the Respondent must have been aware of the Complainant and its trademarks when registering the disputed domain name.

Regarding the Complainant's claim that it had previously registered and used the nearly identical domain name <boehringeringelheimpetrebates.com> to offer rebates on pet health products, the Panel finds that this domain name is owned by BOEHRINGER INGELHEIM VETMEDICA GMBH, not the Complainant. Nevertheless, based on the evidence presented, the Panel reasonably assumes that this company belongs to the same group of companies as the Complainant. The Panel concludes that by registering a domain name that is almost identical to an already commercially established domain name/website, except for two misspellings, the Respondent attempted to unfairly exploit the distinctiveness of the website/domain name for commercial gain.

Therefore, the Panel finds that Respondent has registered the disputed domain name in bad faith.

#### **Use in bad faith**

The disputed domain name incorporates almost all of the Complainant's distinctive trademarks, giving the impression of a connection to the goods/services marketed by the Complainant and creating a likelihood of confusion with its trademarks.

The evidence submitted by the Complainant further shows that the Respondent is using the disputed domain name to host a website containing commercial links. The Panel finds that such use is not for any bona fide offerings, but rather an attempt to attract internet users to the website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement.

Therefore, the Panel finds that the disputed domain name is being used in bad faith.

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#### PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

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#### PRINCIPAL REASONS FOR THE DECISION

The Panel has determined that the disputed domain name is confusingly similar to the Complainant's trademarks, and the wording of the disputed domain name indicates typosquatting.

Based on the contentions presented by the Complainant, the Panel has found that the Complainant has satisfactorily made a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

The Panel finds that, based on the Complainant's contentions and evidence, it can be concluded that the Respondent must have been aware of the Complainant's trademarks when it registered the disputed domain name, and as such, the Respondent has registered the disputed domain name in bad faith.

Lastly, the Panel has concluded that the Complainant has successfully proven that the disputed domain name is being used in bad faith.

Therefore, for the aforementioned reasons, the Panel orders that the disputed domain name be transferred to the Complainant.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

**Accepted**

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AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. boehringeringelhempetrebates.com: Transferred

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## PANELLISTS

Name **Karel Šindelka**

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DATE OF PANEL DECISION **2023-03-20**

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Publish the Decision

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